

STATE ELECTION COMMISSION, HARYANA
NIRVACHAN SADAN, PLOT NO. 2, SECTOR-17,
PANCHKULA - 134109

The 22nd March, 2011

No. SEC/E-II/2011/524.—On the recommendation of Deputy Commissioner-cum-District Election Officer (P), Jind the name of Sh. Dharmpal S/o Sh. Balwant was notified as Panch, Ward No.7, Gram Panchayat, Singhpura, Block Safidon, District Jind by the State Election Commission, Haryana vide its Notification No. SEC/E-II/2010/5415, dated 6th July, 2010.

2. Sh. Sushil Kumar S/o Sh. Daya Nand, Village Singhpura, Block Safidon, District Jind filed a Civil Writ Petition No. 13673 of 2010 in the Hon'ble Punjab and Haryana High Court in which he had claimed that in the election of the seat of Panch Ward No.7. He had secured 78 votes, whereas Sh. Dharmpal (respondent No. 7 in the CWP) had secured 56 votes, the third candidate namely Sh. Krishan had secured only 3 votes and 6 votes were declared invalid. Subsequently, Returning Officer had issued an election certificate of Panch in Form No. 21 -B in his favour. However, against the record, the name of Sh. Dharmpal (respondent No. 7 in the CWP) was shown as an elected Panch instead of him on the basis of Form No. 14, which was manipulated by showing the votes secured by him as votes secured by Sh. Dharmpal (respondent No. 7 in the CWP).

3. The CWP was finally disposed of by the Hon'ble Court on 28.09.2010 with the following orders:—

“It is now well settled that the Returning Officer is the one, who is in charge of an election. He not only has to conduct the election, but has to arrive at a subjective satisfaction as to who has won the election and after declaring a candidate to be elected. He has to issue an election certificate. The Returning Officer is to be protected as an independent person and no superior office can sit-over the judgement over the subjective satisfaction of the Returning Officer. Whatever is done by the Returning Officer, can only be assailed by filing an election petition. The Election Tribunal has the power under the Haryana Panchayati Raj Act, 1994 to set aside the result declared by the Returning Officer. What has been done in the present case, if it is permitted, then a Deputy Commissioner or any other official of the State will disturb the result declared by the Returning Officer. Such a course is fraught with dangerous consequences. If the Returning Officer had acted out of the malice or his action is a result of fraud and election certificate is a result of fraud and election certificate is a result of fabrication, then the remedy for the aggrieved candidate is to approach the Election Tribunal to challenge the certificate issued by the Returning Officer. The Election Tribunal can change the result. This power is nowhere vested with the Deputy Commissioner or the Block Development and Panchayat Officer. Thus, the action of the Deputy Commissioner to hold an enquiry and say that the Returning Officer had not rightly issued the election certificate is not tenable.

Having said so, this Court cannot return a finding that the Returning Officer had acted in a fair manner. Possibility of the view projected by the respondents that the result sheet and the record depict that the petitioner had obtained less votes cannot be ruled out.

Two contradictory versions are available, thus, there are disputed questions of fact, upon which this Court shall refrain the comment. This Court cannot determine, as to which version of them is correct that can only be done by the Election Tribunal, where the parties can adduce their evidence. At the moment, this Court only holds an opinion that the certificate issued by the Returning Officer is to be given due sanctity and nobody can tamper with it, except by the following the procedure, which is lawfully prescribed.

Hence, the election of respondent No. 7 is hereby set aside. Respondent No. 7 is relegated to the remedy of filing an election petition. In case such a petition is filed within a period of seven days from the date of receipt of a certified copy of this order, no objection shall be raised that the same is barred by limitation. As the election of respondent No. 7 has been set aside by virtue of this order and this Court is permitting him to avail remedy of filing an election petition, the Election Tribunal shall decide the election petition within a period of one month from the date of its institution and if necessary, the Election Tribunal shall hold recounting of the votes and examine the record to arrive at a just conclusion".

4. In view of the orders of the Hon'ble Court, Deputy Commissioner-cum-District Election Officer (P), Jind vide Memo No. 5766/Panchayat, dated 30.11.2010 had requested this Commission to denotify the name of Sh. Dharmpal S/o Sh. Balwant and further notify the name of Sh. Sushil Kumar S/o Sh. Daya Nand as elected Panch of Ward No.7, Gram Panchayat Singhpura. The Commission vide letter No. SEC./4E-II/2010/8230 dated 20.12.2010 asked the Deputy Commissioner-cum- District Election Officer (P), Jind to clarify whether Sh. Dharmpal (respondent No. 7) has filed any election petition in the Civil Court having ordinary jurisdiction in the area, as per the orders dated 28th September, 2010 of the Hon'ble High Court or not? In reply, the Deputy Commissioner-cum-District Election Commissioner, Jind vide Memo No. Panchayat/P.A./2011/659, dated 10th February, 2011 has informed that as per the report of Block Development and Panchayat Officer, Safidon, neither Sh. Dharam Pal has filed an election petition nor he was willing to file the same in future.

5. In pursuance of the orders of Hon'ble Punjab and Haryana High Court and the proposal of Deputy Commissioner-cum-District Election Officer (P), Jind, the State Election Commission, Haryana hereby de-notify the name of Sh. Dharmpal S/o Sh. Balwant from the seat of Panch Ward No. 7, Gram Panchayat Singhpura, Block Safidon, District Jind. As regarding, notification of the name of Sh. Sushil Kumar S/o Sh. Daya Nand as elected Panch of Ward No.7, Gram Panchayat Singhpura, Block Safidon, District Jind, decision shall be taken in due course of time after examining the matter in the light of the orders of Hon'ble High Court, as Sh. Dharam Pal has decided not to file election petition, as informed by the Deputy Commissioner-cum-District Election Officer (P), Jind.

By Order

(Sd.)...

Panchkula :

Secretary,

The 21st March, 2011

State Election Commission, Haryana.